87-566 (1)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

No. ____

JOSEPH LOESCH,

Petitioner,

v.

KATHRYN HECK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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In Propria Persona

QUESTIONS PRESENTED

1. Does the California Supreme Court allow a freedom of judicial discretion in family law matters that violates the standards of evidence and compelling cause required by this Court in regard to the due process and equal protection rights reserved for the parent/child relationship?

2. Whether the Due Process and Equal Protection rulings of this Court in cases such as Stanley v. Illinois require that the relationship of a child with her unwed parents, established by the parents' sharing of custody, be protected from unwarranted interference; or whether state courts can proceed as at a "first determination" of custody because the existing relationships were not established by judicial decree?

3. Are children of unwed parents classified differently from children of nuclear households, regarding their right to be brought up by both father and mother, with the fullest possible benefit of the contact, care, talents and decisionmaking abilities of both parents?

4. Under Stanley v. Illinois and Caban v. Mohammed, does an unwed father have the same parental rights as an unwed mother to continue sharing equal custody of their child? If the mother's agreement to continue shared parenting

is removed, is the father/child relationship protected under the due process and equal protection causes from unwarranted interference, or set at issue by the mother's change of heart and subject to redetermination by the state?

5. Do the due process and equal protection clauses allow state courts to construe an unwed father's requests to resume equal custody as a "campaign to limit the mother", while the mother has seized full custody of the child and asked the court to terminate the father's custody rights?

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Joseph Loesch respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Second Appellate District of California, entered in this cause on March 11, 1987.

OPINION BELOW

The opinion of the Appellate Court for the Second District of California is unpublished and

appears in the Appendix, page A-2. That Opinion was entered on March 11, 1987. The California Supreme Court denied a timely Petition for Hearing on June 2, 1987 [Appendix-1].

JURISDICTION

The Order on Order to Show Cause requesting restoral of the equal parental custody and control of Ingrid Kathryn Loesch by both of her parents, filed by Petitioner was entered by the California Superior Court on June 28, 1985 [Appendix-24]. The order terminated Petitioner's legal joint custody and limited his contact with the child to a physical custody of approximately one-fourth of the month.

The Court of Appeals for the Second Judicial District of California entered its Opinion on March 11, 1987, affirming the trial court's Order [Appendix-2].

The Supreme Court of California denied a timely Petition for Hearing, making final the decision of the Court of Appeals, on June 2, 1987 [Appendix-1].

Jurisdiction to review the judgment of the California Courts is conferred on this Court by Article XIV of the Fourteenth Amendment of the Constitution of the United States, and by Title 28, United States Code, Sec. 1257(3). As set forth below, the Opinion and Judgment of the California Appellate and Supreme Courts raise important questions under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution, Amendment XIV

"The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents."

California Civil Code, Section 7002

"The mother of an unmarried minor child is entitled to its custody, services and earnings. The father of the child, if presumed to be the father under subdivision (a) of Section 7004, is equally entitled to the custody, services and earnings of the unmarried minor. If either the father or mother be dead or unable or refuse to take the custody or has abandoned his or her family, the other is entitled to its custody, services and earnings.

California Civil Code, Section 197

"The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy."

California Civil Code, Section 4600(a)

"Custody should be awarded in the following order of preference according to the best interests of the child, pursuant to Section 4608: To both parents jointly pursuant to Section 4600.5 or to either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex."

California Civil Code, Section 4600(b)

"There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child subject to Section 4608, where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage."

California Civil Code Sections 4600.5(a)

"Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases, subject to the provisions of Section 4608. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to Section 4602."

California Civil Code Sections 4600.5(b)

STATEMENT OF THE CASE

Petitioner JOSEPH LOESCH and Respondent KATHRYN HECK are the unmarried parents of INGRID LOESCH, born October 27, 1982 [Appendix-48]. From birth, the parents shared in Ingrid's care and custody. The father provided the mother with financial support, and provided Ingrid with her own bedroom in his home as well as visiting her in the mother's home. Ingrid was eventually sleeping in her own bedroom in both parents' homes, an equal number of nights [RT 110:7-15; 130:14- 131:2].

The parties' disagreed over taking Ingrid to the doctor when ill, with the mother threatening to withhold contact with the child if the father took her to the doctor without permission [RT 52-53]. In February 1984, the parents agreed to continue the equal custody and sleeping arrangement per a new schedule suggested by the mother [Appendix-49]. An argument about doctors' advice regarding the mother's alcohol consumption while breastfeeding Ingrid resulted in the mother taking Ingrid from the father's home. The father requested they restore their parenting schedule, in letters and phone calls; the mother proposed he have less contact with the child, and then refused any contact except in her own home under supervision of her friends [RT 127:21-25].

PROCEDURAL HISTORY

The procedural history of the case reflects the father's attempts to reestablish his previous joint legal and physical custody of the child.

The father filed a Complaint and Order to Show Cause on February 24 and April 4, 1984, asking that legal and physical custody be restored per the mother's schedules of 2/5/84 [Appendix-50, 53]. In May of 1984 the mother replied to the Order to Show Cause with a Responsive Declaration asking for sole legal and physical custody of Ingrid, on grounds that the child experienced difficulty with the sleeping arrangement; her Answer to Complaint claimed a lack of knowledge of Joseph Loesch being Ingrid Loesch's father, and asked that if he were found to be the father, that the court not restore his joint custody [Appendix-57, 61].

Petitioner substituted new counsel in June, 1984 who attempted to negotiate a temporary stipulation of father-daughter contact. The mother refused any temporary schedule except to a decreased paternal custody arrangement, with the provision that it be in effect six months or more. As Ingrid was then being allowed some contact with the father, and relying on his attorney's warning that a six-month agreement of decreased custody might divert the court from the original equal custody, Petitioner chose to wait for the OSC hearing in August. Thereupon the mother completely withheld the child again.

The father made an Ex Parte request of the court to immediately restore Ingrid's contact with him,

and Temporary Restraining Orders, which the mother declared "moot," as she now had the child in her custody. The father's Ex Parte Request was denied, but an early hearing date was set. On the hearing date, the mother signed a temporary stipulation [Appendix-44] allowing the father the decreased schedule she had lately offered and withdrawn; she then objected to it being ordered by the court, and obtained a further continuance of three weeks from the court, with no provision for the child to see her father. On advice of counsel pursuant to California Civil Code Section 197, the father insisted on his right to see his daughter and picked her up from a babysitter. The mother claimed this was an "abduction," and sought an Ex Parte order terminating all of the father's custody rights, subjecting him to visitations monitored by her friends.

The Ex Parte judge who had followed the case denied the mother's request and ordered a week of shared custody and a hearing on July 3, 1984. On that date, the mother allowed the signed stipulation to be made an order of the court [Appendix-44]. The stipulation provided a temporary order for joint legal and physical custody, and psychiatric evaluation by a court-appointed psychiatrist, pending the hearing on Appellant's February, 1984 Order to Show Cause.

There followed a year of delays, necessitated by the psychiatrist's schedule, the court, and the attorneys; for that year the temporary stipulation remained in effect. The parties completed psychiatric

evaluation by Gary Chase, M.D., Senior Psychiatric Consultant to the Los Angeles County Superior Court Family Law Departments; his recommendations to the Court were filed December 3, 1984. A second recommendation was filed February 17, 1985.

CONSTITUTIONAL ISSUES RAISED

Petitioner first raised the issue of constitutional rights in June 1984, in the Memorandum of Points and Authorities to his Ex Parte request, by citing under relevant California Civil Codes and Stanley v. Illinois, his essential constitutional right to raise his children, equal to the mother, regardless of marital status and without need of specific judicial permission. Pertinent quotations were from California Civil Code §§7002 and 197, set forth on pages 2 and 3 above, "Statutory Provisions", as well as the following:

> "With respect to the rights of a presumed father who has not obtained a judgment declaring him to be the father of a minor, the Court in People v. Johnson (1984) 151 Cal.App.3d 1021, 1025...stated:
>
> > "Thus, the Act--including section 7004--was plainly intended to establish and promote the rights of putative fathers, and to remove obstacles to the maintenance of parental relations for the benefit of 'illegitimate' children. And section 197 does not specify that only those parties who have by judicial decree achieved formal status as a parent (cf. §7006) are entitled to custody. Rather, it grants equal custodial rights to anyone 'presumed to be a father under section 7004,' thereby indicating that the substance of

> the relationship--spousal and filial, rather than prior judicial adjudication shall have precedence..." (emphasis original).
>
> ...The Court in In Re Tricia M. discussed the constitutional rights of fathers as decided in Stanley v. Illinois (1972) 405 U.S. 645 [31 L.Ed.2d 551, 92 S.Ct. 1208]:
>
> "Mr. Justice White, writing for the Court in Stanley set out some basic concepts in this area:
>
> 'The rights to conceive and to raise one's children have been deemed "essential," [citation], "basic civil rights of man," [citation], and "[r]ights far more precious ... than property rights," [citation].
>
> 'Nor has the law refused to recognize those family relationships unlegitimized by a marriage ceremony ..."To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses." [Citations.]' (Stanley v. Illinois, 405 U.S. 645, 651-652 [31 L.Ed.2d 551, 558-559, 92 S.Ct. 1208, 1212-1213.].)" (emphasis added)

Petitioner next raised these rights in a Memo of Points and Authorities submitted to the trial court at the beginning of the hearing on June 4, 1984. Equal parental rights were again raised in Petitioner's Request for a Statement of Decision, filed with the court on June 17, 1987. These issues were thereafter raised in Appellant's Opening Brief and all subsequent briefs to the California Courts.

JUNE 1985 HEARING

After delays of 1½ years, there was a full hearing in June 1985 in Los Angeles Superior Court by Judge Robert Fainer.

The Judge did not address protecting the original, de jure custody arrangement that was the cause of action in the Order to Show Cause. He did not require a substantial showing of cause for changing the child's established custody as required by California and U.S. case law (In Re Marriage of Carney, 24 Cal.3d 725, 157 Cal.Rptr. 383; Stanley v. Illinois). The mother made an unsubstantiated claim that the child had more illness, anger, and problems sleeping in the mother's home when she was also sleeping in the father's home, which was at odds with her statements that the father was "overly concerned" about the child's health matters, and the court psychiatrist's encouragement to gradually resume an equal sleepover schedule. Aside from the "sleeping problems" there was no good cause suggested or required by the court for the mother wanting to fully terminate the father's legal and physical custody.

Both the father and the mother alleged physical violence at the February 1984 argument and other occasions; the mother presented no claim of injury, while the father presented evidence of injury to his hand, and the judge found the mother in contempt of a court restraining order for physical behavior. The mother stated that she felt a family consisted of two persons, "mother and daughter." She denied that

the cause of action arose from the father objecting to her alcohol consumption while breastfeeding, and her objections to him seeking medical care for the child.

The father testified that the mother ignored the child's medical needs and the pediatricians' advice, and a MediCal worker testified that the mother had allowed the child's medical coverage to lapse. The judge stated that mother was "irresponsible"; in response, the mother later testified that the father was "overly concerned" about medical care.

The mother also denied hitting the child on the forehead in an incident the father had caused to be investigated by a child abuse worker, a doctor and the court psychiatrist.

There were no allegations of neglectful care by the father. The father asked that he assume full medical responsibility and insurance costs for the child, and that the court restore equal custody as per a schedule recommended by the court psychiatrist, and that the court order counseling for the mother regarding possible problems with alcohol abuse and self-control.

The recommendations of the court psychiatrist were received by the court; Petitioner attempted to present evidence regarding the events of the original cause of action, including an injury; the judge stated that he was "not interested" in events that were two years old", but allowed Petitioner's attorney to "make a record."

Ignoring the original custody at issue, the judge proceeded as if custody were being determined for the first time. He showed himself ready to make a decision before hearing the evidence in the case [RT 28:10; 32:17-19; 34:12-21; 40:18-22]; during the hearing he stated he was not interested in the circumstances of preceding the temporary stipulation, as it was "two years ago" [RT 110-112], and stated he was going to make an order other than Judge Sandoz' order (on the stipulation) [RT 124:10-15].

The judge expressed interest in making an order of counseling for the parties; Petitioner's attorney emphasized that Petitioner was in court to seek restoral of his equal custody, and would go to counseling as well. Petitioner's attorney asked the other attorney about getting the mother to agree to restored custody and counseling; the judge stated that he did not want the attorneys to "make a deal", but that it was "better that he make an order" and that he "would not be blocked by [the father]", that he didn't think "50-50" custody was the answer, that he preferred the parties stipulate to an order of counseling [RT 28:10-19; 34:11-26; 28:16-21]. The judge suggested that with equal custody, Petitioner's parents would in fact raise the child;" counsel informed the judge that the father worked four ten-hour days, and could personally care for the child. [RT 34:18-26; 37:27-38:14; 35:5-10].

In addition to the facts above, the Judge was given the following evidence with regard to the father

resuming joint and equal custody:

That the father is a loving and responsible parent, capable of providing a good, stable home for the child [RT:18-19; 50:14-51:9]; that Ingrid had her own bedroom in his home (and the home of his parents, where he resided at time of the hearing as a result of attorney costs [RT 128:21-130:2; 226:1-3]; that the father spends his time with Ingrid in activities geared toward a child [RT 50:14 - 51:9]; he is concerned for her physical well being and willing to assume medical costs and responsibilities [RT 51:24-52:8; 71:28-72:7]; and Ingrid has benefited from her relationship with her father [RT 50:14-51:9].

The judge found the father to have made an unreasonable "campaign in court to limit the access of the mother," and to have caused the communication problems by that campaign in court and by the father's allegation of child abuse and alcohol abuse, and his "refusal" of the judge's urgings to go to counseling. The judge found the mother in in contempt of court for one incident of violence, and ordered her to resume medical coverage, and urged her to include a substance-abuse program in her counseling. (Appendix B). The judge terminated the father's legal custody, specifically restricted him from caring for the child's medical needs except in an emergency, and reduced his original physical custody to one-fourth of the month. The Court of Appeal affirmed.

The Appellate Court also did not recognize the original custody that was at issue, and referred only to the temporary stipulation as having insufficient legal status to require a showing of changed circumstances before the child's custody could be changed.

REASONS FOR GRANTING THE WRIT

A. Importance of the Questions

Aside from the importance of these questions to Petitioner and his child, the question of essential and fundamental rights in the parent/child relationship has not been addressed by this Court in the area of where those rights are most commonly threatened and lost: not where there is death of a parent, improper interference by state adoption agencies, or clearly proven failures on the part of either parent to care for the child. The parent/child relationship is most at risk where one parent simply asserts that they have a parental relationship that is superior and more essential to the child than that of the other parent. And by virtue of state courts favoring court decrees rather than familial bonds, one parent can force the other into a complete redetermination of the established parent/child relationships by forcing a hearing in state courts.

The child's need and right to ongoing love and care from her father and mother, and the essential, fundamental right of a parent to care for and raise his own child, is redetermined by state officials in cases where there is no fault or failure to justify decreasing the parent/child bond. Yet in state courts, the regard for family custody relationships established by court decrees is consistently higher than the regard for relationships established by the

natural relationship of a parent and child, and their personal history of being with each other.

The increasingly lucrative divorce-law business, and the increasing numbers of children and parents deprived of their most precious possession--each other--makes the "ordinary custody decision" a crucial concern of the state. The divorce rate and the numbers of legally separated children and parents in the United States makes equal protection and due process for the parent/child relationship an issue urgently needing assistance from this court.

There is also need to encourage unwed, or divorced, fathers who wish to maintain their paternal relationship with their children. In cases such as the one at bar, there is strong evidence that a father wishing to help raise his children--a generally accepted "good" that cannot happen often enough--he runs a high risk of emotional and economic devastation, as well as punitive labels and court orders by judges who do not recognize paternity as half of a child's world. As much as women have called for recognition in the marketplace and political system, men need to be given an equal place in the family and in their children's eyes.

From an economic standpoint, this court needs to promote relationships established by parental cooperation and responsible thinking; the incredible state cost and backlog of the divorce courts, and the high state cost of maintaining the members of broken families, urges that court decrees <u>not</u> be required

before common sense can rule basic family relationships.

But most importantly, there is a terrible need for the children of divorce -- an increasing population -- to be released from the suspect classification under which they currently lose their relationship with one of their parents. The right to ongoing care and upbringing by Dad and by Mom is accorded to children of intact nuclear families. Somehow, state officials decide that the same child who loved and depended on the protection and love of her father and mother, can do well without one of them when the parents break up. The child has no voice, except in the questions the "disposable" parent cannot answer. --"Why can't I see you?"

B. Conflict Between State and U.S. Standards

The decision below conflicts with rulings of this court in Stanley v. Illinois and other cases regarding the Equal Protection and Due Process rights of the Parent/Child relationship. By asserting state court determinations as the legally recognized beginning of the Parent-Child relationship, the California courts make a suspect classifications of unwed parents and their children.

As stated above, the cause of action in this case was arbitrary interference with equal parental custody shared by the father and mother. Petitioner's case concerns the difference between the standards of this Court and the California state courts in recognizing established parent/child relationships, as exemplified by Burchard v. Garay (1986) 42 Cal.3d 531, and Stanley v. Illinois 405 U.S. 645, 651 (1972).

This Court has granted and affirmed a high legal status for parent/child custody relationships established by biological relation and the practice of parental care, whereas the California state courts reserve such legal status for child custody arranged by court decree. The state courts emphasize judicial determinations as the recognized legal point of origin of parent/child relationships outside the nuclear family setting, and feel free to redetermine custody relationships formed by parental practice as if the custody relationship were being determined for the first time. This conflicts with the standards set forth by this court. While this Court has more often

ruled on parent/child rights in regard to adoption cases rather than "best interests" custody cases, the Court has established clear principles regarding family rights standards of evidence required for the state to find parent/child relationships not in the best interests of all concerned.

This Court has recognized the rights of parents and children to have their relationship with each other as being basic, fundamental rights protected by the Fourteenth Amendment to the United States Constitution. Stanley v. Illinois, 405 U.S. 645, 651 (1972); also Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Griswold v. Connecticut, 381 U.S. 479, 500 (1965).

The Court has frequently emphasized primacy of the parent-child relationship. The rights to conceive and to raise one's children have been called "essential" and "[r]ights far more precious than property rights". Bell v. City of Milwaukee, 746 F.2d 1205 (1984); Meyer v. Nebraska, (1923) 262 U.S. 390, 399; May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 843 97 L.Ed. 1221. The liberty guaranteed by the Fourteenth Amendment is found to protect the right of the individual "to marry, establish a home and bring up children". Meyer v. Nebraska, supra. A "fundamental liberty interest of natural parents in the care and management of their child" was cited in Santosky v. Kramer, 102 S.Ct. 1388.

In constitutional law a fundamental right is defined as a right so basic or essential that the state must have a compelling interest to override it and

must, even in those cases, use the least restrictive means possible to secure the compelling interest.[1] Roe v. Wade, 410 U.S. 113, 162-163 (1973); Dunn v. Blumstein, 405 U.S. 330, 342 (1972); Kramer v. Union Free School, 395 U.S. 621, 627 (1969).

And this Court has stated that the relationship between a parent and child is constitutionally protected from state intrusion. Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Roberts v. United States Jaycees 104 S.Ct. 3244 (1984) citing Meyer v. Nebraska and Pierce v. Society of Sisters 268 U.S. 510 (1925).

These cases make it clear that parents have a fundamental right to direct the upbringing of their minor children. What remains to be examined regarding this case is whether these parental rights exist only within a traditional nuclear family setting or if they are present independently of such a structure.

The Supreme Court has addressed that question in Stanley v. Illinois, supra. In Stanley, the Court

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1 The least restrictive alternative doctrine was defined in Shelton v. Tucker as follows:
[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieve. The breadth of legislative abridgement must be viewed in light of the least drastic means for achieving the same basic purpose. 364 U.S. 479, 488 (1960).

discussed an unwed father's right to custody of his children. In addressing the constitutionality of state adoption statutes which presumed to remove the children from the father when the recognized parental status of the mother was lost through her death, the court pointed out that it repeatedly has placed emphasis on "the importance of the family," and it stated that "[t]he rights to conceive and raise one's children have been deemed 'essential', 'basic civil rights of man' and 'rights far more precious. . . than property rights.'" (at 651, citing Skinner v. Oklahoma, 316 U.S. 535, 541 (1941); Meyers v. Nebraska, 262 U.S. 390, 399 (1932)). The Court stated that

> The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements. Stanley, at 651.

Thus, the Stanley Court recognized the right of the biological father, absent a showing of unfitness, to continue to raise his children even though the traditional bond of marriage was absent in this family setting. (Id. at 658-59).

In the case at bar, there was no evidence of unfitness on the part of the father to prevent him continuing to raise his daughter in an equal custody

arrangement. As developed above in the Statement of Case, the mother alleged that the child was more frequently ill from sleeping in both parents' homes. If that allegation were true--and it conflicts with the mother saying that the father was "overly concerned" about health matters, and the court psychiatric expert encouraging more of the shared sleeping arrangement--the "least restrictive alternative" would be to alter the sleeping arrangement: not to terminate the father's custody rights, or attempt to deny that he was the father. And the reasons given by the court for interfering with the father's custody--that he was unreasonable and inflexible and had a court campaign to limit the mother, thereby making her the more reasonable parent (more in the best interests of the child)--is completely at odds with the father asking that equal custody be restored, and the mother seizing the child, denying paternity, asking for full custody and declaring that to her a family consists of "two people -- mother and daughter."

The Stanley standard of protection for an established parent/child relationship was unjustifiably denied this unwed father.

The importance of a biological relationship as a basis for extending constitutional protection was made clearer in Moore v. City of E. Cleveland, 431 U.S. 494, 499-500 (1977), wherein an extended family relationship was protected from discrimination favoring nuclear families. Stanley and Moore show that family relationships linked biologically and functionally

similar to that of the nuclear family occupy a place in the American tradition similar to that of the nuclear family, and consequently enjoy the same constitutional protections from state or other interference.

The Court went further in defining constitutional protection of family relationships in Smith v. Organization of Foster Families For Equality ("Smith") 431 U.S. 816, 842-44 (1977) and Quilloin v. Walcott, 434 U.S. 246, 255 (1978). The Smith Court noted that the usual understanding of family implies biological relationships. . . ." and that the importance of the family stems from the emotional attachments that are developed there (Id. 843, 844) (emphasis added). The actual importance of the emotional ties in identifying a constitutionally protected relationship was strongly stated in Quilloin v. Walcott.

Quilloin, like Stanley, involved an unwed father's parental rights. The unwed father's rights were not enforced by this Court, not because he was outside a nuclear family setting, but because he was outside the determining standard for those parental rights: though he had the biological connection, he had not exercised custody and responsibility, and there was not a strong emotional bond between the parent and child.

This contrasts with William Stanley and the petitioner herein, who both developed significant ties and involvement as parents before the lower courts chose to redetermine their parental status. This

unwed father not only exercised custody and responsibility, with the likelihood of an emotional bond with his daughter, but was specifically found by the court's psychiatric expert to be "quite warm, loving and devoted to Ingrid" and "a safe, reassuring father" who "certainly would provide responsibly and well for her" [November 5 Report of Dr. Chase, pages 8-10]. Dr. Chase recommended restoring the father's custody in increments to three days per week.

It seems clear from those elements isolated by the Court as necessary for constitutional protection of the parent/child relationship that the relationship between unwed parents and their child is entitled to such protection. The Court recognizes what this unwed father possessed: the necessary biological relationship stressed by the Stanley-Moore-Smith line of cases, the established emotional ties singled out as controlling by the Court in Smith and Quilloin, contribution of substantial support and the exercise of custody and care of the child as stressed by the Court in Quilloin and Stanley.

The California Supreme Court, which at one time recognized the Stanley principles in custody disputes by stressing, in In Re Marriage of Carney, the importance of ongoing and established family relationships as they developed through custody agreements of the parents, has lately altered that standard in Burchard v. Garay (1986) 42 Cal.3d 531.

Under Burchard v. Garay (which was cited by the Appellate Court herein in support of the lower court's freedom to change custody), state courts do not need to find a substantial change of circumstances to justify changing a child's established relations with her parents where custody is by parental agreement. Rather, courts can proceed as if these relationships were being formed for the first time (by the court), since substantial legal status is reserved for custody determinations by judicial decree. The mere" fact that the child is strongly bonded to a parent and has her sense of security in expecting ongoing care and closeness with her parent does not have the weight of a judicially determined relationship.

Though the Burchard court recognized Ana Burchard's de jure custody, it altered the "change of circumstances rule" established in In Re Marriage of Carney, supra, stating that the rule actually only applies "once it has been established that a particular custody arrangement is in the best interests of the child...whenever custody has been established by judicial decree" [Id. at 535].

> "The change of circumstances standard is based on principles of res judicata." [citations] "The Rule established in a majority of jurisdictions, which we here endorse, applies that standard whenever custody has been established by judicial decree. A minority of states limit the standard further, applying it only when custody was determined through an adversarial hearing. No state, so far as we have ascertained, applies the changed-

> circumstance standard when there has been no prior judicial determination of custody." Burchard, at 535. (emphasis added)

Justice Mosk found that the majority distinction to overly limit the changed circumstances requirement, and felt it constituted "denial of protection to an entire class of children solely because custody was not originally established by judicial decree." [Id. at 546, 547] Along with Justice Lucas, he agreed with the Burchard majority's decision--based on the Carney rule, with the view that the majority's interpretation amounted to "a tacit overruling of ...Carney." [Id. at 546]

> "In Carney we expressly held that the rule applied regardless of how custody was originally decided upon... We imposed on the noncustodial mother the burden of proving that a substantial change in circumstances had occurred... and we concluded that she had not carried her burden [Carney at 740]. It is difficult for me to conceive how we could have established the point more clearly." [Id. at 547] (emphasis added)

Like Ana Burchard, Ingrid's father had lawfully acquired (joint) custody by practicing, from Ingrid's birth, the equal custody rights both parents have under California Civil Code Sections 197 and 7002. Unlike the Burchard waiving of the "rule", the lower courts herein did not recognize the importance of an established relationship, but emphasize the status of judicial decrees, denying protection to the parent/child relationship because Ingrid belongs to the

classification of children mentioned by Justice Mosk. And the Appellate Court herein did refer to the changed circumstances rule; not in regard to Ingrid's family bonds, but in regard to the temporary custody stipulation of these proceedings.

C. Due Process Rights That Were Violated

Due Process Rights of Joseph and Ingrid Loesch were violated by the state courts as follows:

1. The lower courts refused to recognize the estabished parent/child relationship that existed as the cause of action.

In the case at bar, Petitioner sought state protection of his established equal custody relationship with his daughter when the mother arbitrarily seized full custody of the child. The lower courts never addressed whether the Petitioner had a defendable right, in his established parenting of Ingrid, for which he could seek court protection. They referred only to the temporary custody stipulation as being modified.

2. The lower courts failed to address the evidence presented in the case.

As stated above, the lower courts did not have evidence of "compelling cause" for terminating or reducing the father's custody. They also ignored the weight of evidence on a simple evidentiary level.

Where all court documents showed a campaign by the mother to limit the access of the father, the court stated the opposite, completely controverted conclusion. The judge repeatedly ignored the fact that the father had a four-day work week and could personally care for Ingrid three days; he maintained that the paternal grandparents would raise the child in an equal custody arrangement. Where a MediCal worker and the mother and the judge made statements that showed the mother irresponsible regarding medical care, and the father expressed willingness to assume the responsibility, the court found the mother (in the text of its order) to be the more responsible parent, and restricted the father from providing medical attention; the Court of Appeal justified this on the basis that yearly checkups were sufficient to compensate for possible neglect of medical care. --For a two-year-old child. The father was accused of causing stress by his concerns about child abuse, despite the fact that a child abuse worker, an examining doctor, and the court psychiatrist also found cause for concern. Finally, the recommendation of the court's top psychiatric panel member that the father's custody be increased back to nearly equal custody, was completely ignored by the trial court, and explained as simply "not binding" by the Appellate Court.

A judges' refusal to consider evidence and psychologists' reports denies due process right to

"meaningful hearing." Armstrong v. Mango, 380 U.S. 545, 552; 85 S.Ct.1187 (1965). One of the essential elements of due process is the right to submit --and to have considered--evidence supporting a litigant's cause, particularly evidence involving a child's well being and custody. Application of Gault, 87 S.Ct. 1428, 1435. The father had a right to benefit from evidence submitted on his own behalf: the uncontradicted, unimpeached statements of the Los Angeles Superior Court's senior psychiatric panel member, as well as the clarity of the other pleadings and testimony showing the father's fitness to share custody and to care for Ingrid.

3. The Court punished the father for seeking due process, applying heavy handed justice with facially neutral terminology.

The court's reversal of the "campaign to limit" the other parent, and the assignment of "unreasonableness" and "inflexibility" to the father, as a reason for terminating/decreasing his custody, provides facially neutral explanations of the court's order. The record conflicts too strongly for this to be appropriate.

Mere recitation of a proper state purpose is not sufficient to establish a compelling state interest which can justify such state action Trimble v. Gordon, supra.

4. The Judge applied his personal beliefs, rather than the correct constitutional principles and standards of evidence, to the cause of action.

As stated above, the judge herein announced himself opposed to "50-50" custody well in advance of hearing the case; he ended his hearing with a statement that "I am one of the old fashioned judges who has opposed joint custody..."

The record shows the judge would not accept the fact that the Petitioner would personally raise the child on his days off work; it also shows that he felt that a father who would want to become closely involved in a child's life could not be "normal".

> THE COURT: Do you believe you would have a healthy, normal life if you adjusted your entire life to -- in such a way to convince the court that you should have custody of the minor child, would you have a normal life if that is all you are going to do is spend it with your child?
>
> THE WITNESS: I am still going to work a job. Yes, I will have a normal life.
>
> THE COURT: You mean to suggest to me you should be given custody of the child while you are working, do you?
>
> THE WITNESS: Yes.
>
> ...THE COURT: What you are really telling me is while you are working you want your parents to start all over again with a two or three year old child. Is that what you are telling me?
>
> THE WITNESS: No. Really--
>
> THE COURT: Sounds like it. [RT 73-74]

5. The Judge applied unequal standards to the custody requests of the mother and the father, as developed below.

6. The State's termination of this father's legal custody and reduction of his physical custody violated the standards of this court, in that it interfered with a fundamental parent/child relationship with no substantial evidence of compelling cause to do so.

D. The State Courts Make A Suspect Classification Of Unwed Fathers And Their Children

1. Unwed Fathers

In Stanley v. Illinois, the unwed father fully participated in the upbringing of his children without interference by the state so long as the mother of the children was alive and consenting to his paternal role. Upon her death, the father lost his parental rights under Illinois law.

This Court found the position that unwed fathers "can have protected their parental status via marriage or adoption of the children" so as to promote "legitimacy", to be a state purpose insufficient to outweigh the father's personal interest in continuing to raise his own children.

The Court found that conditioning Stanley's paternal rights on the presence or absence of the

unwed mother's parental status and her "protective" consent to the father's paternal role, was a denial of the essential, fundamental nature of the unwed father's rights. His parental rights could not be diminished (he became a stranger, under Illinois law, to his children) by sudden absence of maternal approval.

In Stanley, the state automatically revoked the father's parenting upon death of the mother, and made his children wards of the state.

While this case did not involve death of the mother, or adoption agencies, the parenting of this unwed father herein was set at issue and subjected to a redetermination when the "protection" afforded by maternal agreement ceased.

As in Stanley, this father's parental role should have been recognized as substantial and equal to the maternal role, regardless of the presence or absence of maternal consent. The parent child relationship had become established and had all the aspects of a substantial family bond.

In Stanley, Caban v. Mohammed 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979) and other cases, this Court has ruled that parental rights exist for equally for men and women under the Fourteenth Amendment. In Stanley v. Illinois, the U.S. Supreme Court found that a child has an equal right to be raised by her father and her mother, and if custody is awarded to one parent it must be to the better parent. See also Lehr v. Robertson, 103 S.Ct.2985

(1983), and Caban v. Mohammed, . The California legislature, if not the California courts, has declared that the parent-child relationship extends equally to every child and every parent, and exists regardless of the marital status of the child's parents (Civil Code §7002); fathers and mothers are equally entitled to the custody of their children (Civil Code §197). California Code of Civil Procedure §4600(b) also recognizes the inherent equality of parents, by favoring whichever parent will allow frequent access to the other parent.

As shown in this case, state courts feel a discretionary freedom to ignore the legislative emphasis on the sharing parent, and to apply different standards of evidence to the custody requests of mothers and fathers. The idea that the father unreasonably limits the mother by asking for equal custody while the mother withholds the child and causes the father to seek court relief; and that upon finally getting a hearing, the courts "are not interested in what happened two years ago" and applies a blind eye to the "campaign" of the mother asking for full custody, indicates unique thinking where the rights of mothers and fathers are concerned. She is "the more flexible, reasonable" parent and the court grants her most of the full custody she requested. --effectively certifying the mother's right to seize custody of the child.

The United States Constitution guarantees not only the enforcement of fair and reasonable laws, but

also the fair and reasonable enforcement of laws. Yick Wo v. Hopkins (1866) 118 U.S. 356, 373-374, 6 S.Ct. 1064, 30 L.Ed. 220.

Where a classification involves gender, it will not withstand a constitutional challenge unless it serves important governmental objectives. Craig v. Boren (1976) 429 U.S.190, 197, 97 S.Ct 45, 50 L.Ed. 2d 397. Judge Fainer's presumption of proper gender roles and stereotypes was shown throughout the hearing, especially in his question about a father having a "healthy, normal life if you adjusted your entire life to--in such a way to convince the court that you should have custody of the minor child, would you have a normal life if that is all you are going to do is spend it with your child?" [RT 73:18-22].

2. **Children**

> "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Amendment XIV.

California law extends the parent-child relationship equally to every child and every parent regardless of the marital status of the child's parents (Cal. Civil Code §§ 197, 7002). However, the California courts enjoy a freedom of discretion in family law matters that allows them to override statutory law and the result is, as Justice Mosk said in Burchard v. Garay, supra, "to deny protection to an entire class of children" because the child's custody was not established by judicial decree, but by the parents.

Addressing the majority's distinction of the "change of circumstances rule", Justice Mosk wrote that

> "...the limited application of the changed circumstances rule that the majority adopt is in conflict with the primary purpose of the rule. The child whose custody was established by means other than judicial decree has the same need for and right to stability and continuity --and accordingly the same entitlement to the protection the rule is intended to provide--as the child whose custody was originally established by judicial decree." [at 548] (emphasis added)

The federal cases mentioned above that establish equal protection of parent/child relationships are incorporated herein by reference.

The state's action of denying Ingrid Loesch the right to continue her established relationships with both of her parents makes her a member of a "suspect classification". She is a member of that classification not as a matter of gender, but by her involuntary status as a child of unwed parents. In that light this Court should apply strict scrutiny to the state's action in assessing whether the suspect class of children of unwed parents are being denied by state action the equal protection of law, compared to the class of children of parents who are married. Ingrid's emotional bond to both parents was subordinated to the state redefining the "best interests" which all of related decisions of this Court find to be the maintaining of family inter-relationships

--the emotional bonding, caring and instruction of the parent/child relationship.

The court's specific interference with the father's right to assure his daughter's medical care, restricting him from taking Ingrid to the doctor without the permission of the parent who the judge had found to be "irresponsible" with regard to medical matters, particularly where it concerned involvement of the father, was not only unjustified interference with a parental right to care for ("raise") one's child. The child's right and need to be responsibly cared for was ignored. The Appellate court's comment that yearly checkups would offset possible harm from lack of attention to illnesses and doctor care, is at odds with the frequency of illness and physical vulnerability characteristic of a child of Ingrid's age.

The child's need to have such care, instruction and ongoing emotional security in [her] two parents is not questioned when the child lives in the nuclear family setting. If those established parent/child bonds have fundamental status for parents, wed or unwed, who are adults and presumably have developed abilities to care for themselves, how much more essential are those rights for the child, whose need to rely on the continued care and affection from her parents is crucial to her development, and which she is helpless to defend or regain if the relationship with a parent is crippled by a court order.

Under the principles of fundamental family rights, children's rights to have the love and upbringing of their father and mother cannot be conditioned on the father and mother favoring each other. The parents "belong", in their parental role, not to each other but to the child. Otherwise, children are subject to suffering undue loss because when the relationships of other people fail, the state moves in and acts to deprive the child of her relationship with one of her parents.

If state action classifies individuals on the basis of a suspect category or burdens a fundamental interest, it is subject to strict judicial scrutiny. Graham v. Richardson (1971) 403 U.S. 365, 371-372, 375-376, 91 S.Ct. 1848, 29 L.Ed 2d 534; Trimble v. Gordon (1977) 430 U.S. 762, 766-767, 97 S.Ct. 1459, 52 L.Ed 2d 31. The California Legislature abolished the concept of "illegitimacy" in 1975 (Stats. 1975, Ch. 1244) and all other distinctions between children whose parents are married and those whose parents are not (Civil Code §§7000-7018). This is consistent with the United States Supreme Court in Trimble v. Gordon, supra, and Jimenez v. Weinberger 417 U.S. 628, 634-638, 41 L.Ed.2d 363, 94 S.Ct. 1204 (1974).

CONCLUSION

It is proper under Federal and California law for an unwed father to seek State protection of his relationship with his child, if the unwed mother presumes to seize full custody, when the paternal

relationship has been established by exercising custody and care of the child, with an emotional bonding between the father and the child. This does not constitute a "campaign" to limit access of the mother, but a request for equal protection and due process, and in fact is a request that extends equal protection to the unwed mother as well. Where, as here, there is no substantial evidence of a compelling cause for interference with such a relationship, the order must be reversed, to maintain the standards for fundamental rights established by the United States Constitution.

For the foregoing reasons, a Writ of Certiorari should be issued to review the judgment and opinion of the California Court.

Respectfully submitted,

Joseph C. Loesch
18363 Germain Street
Northridge, California 91324
In Propria Persona

CERTIFICATE OF SERVICE

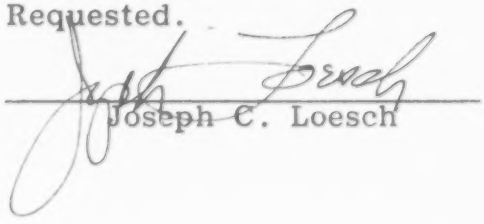
This is to certify that on the 31st day of August, 1987, a true and correct copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States was served on the counsel for Respondent, Ronald A Fiore, Esq., 16133 Ventura Boulevard, Suite 645, Encino, California 91436, by depositing copies thereof in the United States mail, Certified Return Receipt Requested.

_____

Joseph C. Loesch

CERTIFICATE OF SERVICE

This is to certify that on the 6th day of October, 1987, a true copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States, corrected to include a Table of Authorities and Appendix, was served on the counsel for Respondent, Ronald A Fiore, Esq., 16133 Ventura Boulevard, Suite 645, Encino, California 91436, by depositing copies thereof in the United States mail, Certified Return Receipt Requested.



Joseph C. Loesch

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

No. ____

JOSEPH LOESCH,

Petitioner,

v.

KATHRYN HECK,

Respondent.

APPENDIX

JOSEPH C. LOESCH
18363 Germain Street
Northridge, California 92134
(818) 363-7792

In Propria Persona

INDEX

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, No. B016191
S000768

**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

IN BANK

LOESCH

v.

HECK

SUPREME COURT
FILED
JUN - 2 1987
Laurence P. Gill, Clerk

Appellant's petition for review DENIED.

LUCAS
Chief Justice

NOT FOR PUBLICATION

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOSEPH C. LOESCH,	)	NO. B 016191
	)	
Plaintiff and Appellant,	)	(Super.Ct.No. CF 23417)
	)	
	)	
v.	)	
	)	
KATHRYN HECK,	)	
	)	
Defendant and Respondent.	)	

Appellant, Joseph Loesch, and respondent, Kathryn Heck, are the unmarried parents of Ingrid Loesch, born October 27, 1982. Appellant appeals from orders of the superior court denying him joint legal custody and equal physical custody of the minor child, as well as the right to seek nonemergency medical treatment without respondent's consent. He further appeals from orders directing him to pay $8,500 as attorneys' fees to respondent's attorney upon a future showing of his ability to pay, and denying his timely request for a statement of decision. (Code Civ. Proc., § 632.) He contends, in essence: (1) that the court was biased against appellant; (2) that the denial of joint legal custody and equal physical custody deprived him of equal protection and due process of the laws; (3) that the custody order was not in the best interests of the minor child; (4) that the court abused its discretion in modifying a previous joint custody agreement without a showing of changed circumstances; (5) that the award of attorneys' fees to respondent's attorney was without a sufficient factual basis; and (6) that

the denial of a statement of decision requires reversal of the superior court's orders. We affirm.

Appellant and respondent dated intermittently for several years prior to the birth of their daughter, Ingrid. The couple never lived together or married. From the date of her birth, Ingrid resided with respondent. Paternity was never a disputed issue, however, and appellant readily acknowledged that he was the father of the child and contributed funds toward her support. Until December 5, 1983, by mutual agreement of the parties, appellant visited Ingrid at respondent's residence two evenings each week and all day on either Saturday or Sunday, as his schedule permitted. On December 5, 1983, appellant requested to modify the visiting schedule to permit overnight visits to his residence three nights per week. Respondent agreed to the change on a trial basis. After several weeks, however, respondent perceived drastic changes in the child's behavior, and refused to allow overnight visitation. Angered, on February 24, 1984, appellant filed a complaint to establish paternity and visitation rights.

Pending the custody hearing, appellant filed numerous other pleadings including requests for injunctive relief and restraining orders, and orders to show cause, and twice sought to have respondent held in contempt.[1] Once, while respondent was making a court appearance in response to one of appellant's filings, appellant abducted the parties' child and temporarily refused to disclose her whereabouts to respondent.

Respondent thereafter filed an Order to Show Cause seeking full legal and physical custody of Ingrid. Subsequently, the parties signed a written stipulation providing for joint legal and physical

---

1 At appellant's request, the superior court had issued a temporary order restraining respondent from interfering with appellant's visitation rights by committing acts of violence or by entering his residence during periods when appellant had physical custody of Ingrid. On June 4, 1985, respondent was adjudicated guilty of one contempt in connection with an incident on September 29, 1984, wherein she entered appellant s residence and used physical force to prevent him from taking Ingrid to the home of his parents during visitation hours. Respondent was sentenced to five days in county jail, suspended, and placed on probation for three years.

custody pending the custody hearing, which was approved and filed by the superior court on July 3, 1984.[2]

At the June, 1985 custody hearing, appellant attempted to establish that respondent suffered from an alcohol abuse problem and had failed to provide Ingrid with proper medical care. He testified that respondent's "drinking and her temper" had been a problem throughout their relationship. Respondent testified that she did not presently suffer from an alcohol abuse problem and suggested that appellant had exaggerated the problem because he disapproved of her consumption of moderate quantities of beer when she was nursing Ingrid.

The respective living situations of the parties were also the subject of testimony at the custody

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2 Respondent was given physical custody except for Tuesday and Thursday evenings and every other weekend. The stipulation also provided that neither party would bear the burden of proof at the anticipated custody hearing, and that each would submit to clinical evaluation by a court-appointed psychiatrist.

hearing. It was established that appellant resided in a large single-family home owned and occupied by his parents, in which Ingrid had her own bedroom. Appellant was employed as a word processor, with regular work hours of 7 a.m. to 6 p.m., Monday through Thursday. Appellant's mother had agreed to care for Ingrid during any regular work days that appellant had physical custody of his daughter. His net income, less state and federal income tax and social security withholding, was approximately $1,400 per month. Appellant claimed monthly expenses, including child support, which slightly exceeded his income.

Respondent lived in a rented home, which she shared with a roommate. Ingrid also had her own bedroom there. Respondent was employed as a babysitter for another family for approximately 50 hours per week. Ingrid accompanied respondent to her job each day and played with another child, under respondent's supervision. Respondent earned approximately $600 per month doing child care, and was receiving public assistance.

At the time of the custody hearing, respondent and Ingrid had for several months been participating in counseling at the Child Guidance Center in Van Nuys, pursuant to the advice of a Children's Services deputy that both parents and the child should seek treatment. Appellant had refused to participate in counseling.

At the conclusion of the hearing, the court made numerous orders detailing the rights and responsibilities of the parties in relation to the minor child. The court awarded respondent sole legal custody of Ingrid. Appellant was awarded physical custody from Thursday evening to Sunday evening every other week, and from Thursday evening to Friday evening on alternate weeks. Respondent was awarded physical custody at all other times. Appellant was ordered not to take Ingrid for nonemergency medical, dental, psychological, or psychiatric treatment without respondent's consent. Respondent was ordered to have Ingrid undergo medical and dental examinations at least once per calendar year, and to notify appellant monthly, in

writing, of all scheduled medical and dental appointments. Respondent was further ordered to reinstate Medi-Cal insurance coverage for Ingrid, the $15 per month deductible to be paid by appellant.[3] The court found that the reasonable value of legal services performed by respondent's attorney was $8,500, but found that appellant had no present ability to pay. The court made an order which provided "that upon a showing of an ability to pay at any future time, the court should order [appellant] to pay these sums as well as any sums incurred for any future legal services rendered to the plaintiff."

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3 Dorothy Hemphill, a medical eligibility worker for the Department of Social Services, testified that Ingrid's Medi-Cal Insurance coverage had lapsed in March, 1985, because respondent had failed to complete and return a required financial status report. Ingrid's pediatric records established that she had been taken for regular medical examinations, but had occasionally missed appointments. Appellant and respondent each attested that they frequently disagreed regarding the necessity of medical treatment, and that appellant was the parent more inclined to feel treatment was needed.

On June 17, 1985, appellant filed a timely request for a statement of decision, pursuant to Code of Civil Procedure section 632. On June 28, 1985, the court filed a 13-page document entitled "Order for Custody, Child Support, Preliminary Injunctive Orders, Etc.," summarizing its findings and orders regarding custody, child support, and attorneys' fees, and denying appellant's request for a statement of decision. The court found, inter alia, that both parties were "loving, caring, committed parents, but in their struggle for the possession and physical control of and for the affections of their child, they ha[d] acted immaturely, contentiously, often irresponsibly, engaging in dispute-provoking conduct, and occasionally acting in a manner contrary to the best interest of the minor child." The court found that appellant had "embarked upon an extensive campaign against [respondent] in the court to try to limit [her] access and rights to see the minor child." According to the court, appellant was responsible for "stif[ling] any reasonable communication effort by either party

and caus[ing] great tension and hostility between the parties."

Based on appellant's demeanor and facial expressions, the court found that appellant was "more rigid and unyielding and . . . more likely [to] be unwilling to make the compromise and sacrifice necessary for any joint custody order and, particularly, a joint legal custody order."

The court found that appellant had failed to prove that the bruise he observed on Ingrid was the result of abuse by respondent, and, further, that the child abuse accusation, together with other charges of interference with his visitation rights, had produced "unnecessary stress and anxiety for both parties." [4]

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4 On February 9, 1985, appellant noticed a bruise on Ingrid's head which he suspected may have been inflicted by respondent. Before taking Ingrid for a medical examination, however, he took her to be seen by the court-appointed psychiatrist, then called the Department of Public Social Services and caused a suspected child abuse investigation to be conducted. Respondent denied inflicting any injury and stated that Ingrid had told her that the bruise was caused when she hit a wall while at the babysitter's residence.

The court further found that both parties were in need of counseling "to make attitude adjustments so that joint custody can work and to help [them] perform as mature parents," but observed that appellant had refused "to voluntarily become involved in any counseling." Respondent was accordingly found to be "more flexible and willing to provide and direct a normal, reasonable environment for the child," and "to make the decisions required of a parent exercising the responsibilities of legal custody."

In a separate section setting forth the reasons for the order of sole legal custody to respondent, the court found, in relevant part, that Joint legal custody would be "unworkable in this case at the present time because . . . the constant pressure exerted by the [appellant] on [respondent] in these court proceedings [had] resulted in significant hostility between the parties," and, "[t]his hostility, plus the immaturity and irresponsibility of the parties, [had] made any meaningful interchange or discussion between them concerning decisions relating to the health, education and welfare of the minor

child impossible." In conclusion, the court declared that the order giving respondent sole legal custody was in the best interest of the minor child.

Appellant's contentions that the court was biased and that his findings were unsupported by evidence are without merit. During these proceedings, appellant abducted his daughter in an attempt to coerce a settlement, and repeatedly accused respondent of child abuse, neglect, alcoholism, and interference with his visitation rights. This conduct, together with the court's observations of appellant's demeanor in court, furnished ample support for the findings that appellant had "embarked upon an extensive campaign against [respondent] in the court to try to limit [her] access and rights to see the minor child," and was the more "rigid and unyielding" parent. The fact that respondent was presently participating in family therapy with the child, while appellant had refused to participate, lends further support to the finding that respondent was more flexible, and more capable of making "the decisions required of a parent exercising the responsibilities of

legal custody." The court's comments and questions regarding appellant's ability to lead a "normal" life if awarded custody, and his parents' appreciation of the burdens that equal physical custody would impose upon them, were nothing more than "the expressions of opinion uttered by a judge, in what he conceives to be a discharge of his official duties, [and] not evidence of bias or prejudice." (Kreling v. Superior Court (1944) 25 Cal. 2d 305, 311; see also Guardianship of Jacobson (1947) 30 Cal.2d 312, 317.)

Nor is judicial bias demonstrated by the court's failure to precisely follow the recommendations of the court-appointed psychiatrist for substantially equal physical custody. The psychiatrist had a limited opportunity to interview and observe the parties and their daughter in a clinical setting, and his evaluation, although helpful to the court, was not binding. The record altogether fails to support appellant's claim that the judge was predisposed to award custody to respondent. (Cf. In re Marriage of Carney (1979) 24 Cal.3d 725, 736; In re Marriage of Levin (1980) 102 Cal.App.3d 981, 988.)

Appellant's claim of bias is also untimely. The disqualification of a judge for bias "must be asserted at 'the earliest practicable opportunity' after learning of the grounds therefor, otherwise it is deemed waived. [Citation.]" (Lagies v. Copley (1980) 110 Cal. App.3d 958, 966.) Here, appellant could have urged disqualification at the time the court made the offending comments. Having failed to do so, appellant may not complain about the alleged manifestations of bias for the first time on appeal. (People v. Klaess (1982) 129 Cal.App.3d 820, 824; Lagies v. Copley, supra, 110 Cal.App.3d at p. 966.)

Appellant's contentions, that the custody order was not in the best interests of the child, and that the court abused its discretion in conferring primary responsibility for the child's health care upon respondent, are similarly meritless. Ingrid's need for stability and continuity were of paramount concern to the court. (Burchard v. Garay (1986) 42 Cal.3d 531, 538 fn. 6; In re Marriage of Carney, supra, 24 Cal.3d at p. 731.) For almost a year preceding the order to show cause hearing, appellant had physical

custody of Ingrid several evenings each week plus every other weekend. The challenged custody order increased appellant's periods of physical custody to approximately one-third of every month. The custody decree adequately balanced the public policy in favor of assuring frequent and continuing contact with both parents and the sharing of the rights and responsibilities of child rearing, with the need to maintain continuity in the child's established mode of living. (See In re Marriage of Carney, supra, 24 Cal.3d at p. 731; Speelman v. Superior Court (1983) 152 Cal.App.3d 124, 131; Civ. Code § 4600.)

Furthermore, it was not an abuse of discretion to award respondent sole legal custody and primary responsibility for health care, given that the hostilities engendered by the custody fight had impeded meaningful communication between the parties. The order for annual medical and dental checkups adequately addressed the danger, if any, that Ingrid's health care would be deficient by reason of respondent's failure to make and keep medical appointments.

Equally without merit is the contention that the court modified a prior order of joint custody without substantial evidence of changed circumstances. Apart from whether a showing of changed circumstances is required where the prior Judicial decree is based upon a stipulation allocating custody rights pending a hearing (see Burchard v. Garay, supra, 42 Cal.3d at pp. 535-538; In re Marriage of Carney, supra, 24 Cal.3d at pp. 730-731), conduct by a parent that frustrates visitation and impairs communication constitutes an adequate ground for modification of custody. (Burchard v. Garay, supra, 42 Cal.3d at p. 541, fn. 11; Speelman v. Superior Court, supra, 152 Cal.App.3d at p. 132.) The court's finding that appellant had "embarked upon an extensive campaign . . . to try to limit [respondent's] access and rights to see the minor child" and thereby "stifled any reasonable communication effort by either party," justified the change in the previous order.

Appellant contends, in essence, that he was denied equal custody rights because of his status as an unmarried parent, and this denied him due process

and equal protection of the law. In support of this contention, appellant refers to the following comment of the court: ". . . we are not dealing with an ex-husband. We are dealing with a father of a child, but it is very important here that I know the distinction." However, review of the entire record discloses that the offending comment was made during the court's questioning of a Medi-Cal eligibility worker. Viewed in context,[5] it is obvious that the

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5 During the testimony of Dorothy Hemphill, a Medi-Cal eligibility worker for the Department of Social Services, the court asked a question of the witness regarding respondent's eligibility. The following colloquy occurred:

"THE WITNESS: She is a single parent, which automatically makes her eligible for Medical [sic]. Her ex-husband's income is not considered. He is not a part of the household, nor is he obligated.

"THE COURT: May I point out something to you, we are not dealing with an ex-husband. We are dealing with a father of a child, but it is very important here that I know the distinction. She is a single parent. The child -- is the child also eligible?

"THE WITNESS: Absolutely. All children are eligible.

"THE COURT: Her child eligible.

"Now the child's father is known.

(Footnote Continued)

court was merely attempting to clarify whether the child's eligibility for Medi-Cal would be different because, although born of unmarried parents, her father was gainfully employed and his identity known. The contention that the court's custody order was based upon appellant's unmarried status finds no support in the appellate record. (See In re Marriage of Wellman (1980) 104 Cal.App.3d 992 998-999, and fn. 5.)

Appellant asserts that reversal is required because his timely request for a statement of decision was refused. This contention is unavailing. Apart from whether Code of Civil Procedure section 632 imposes the duty to issue a statement of decision

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(Footnote Continued)

"THE WITNESS: Yes.

"THE COURT: And the child's father is employed.

"THE WITNESS: Yes.

"THE COURT: Does that still make the child eligible?

"THE WITNESS: Yes."

following a hearing on an order to show cause,[6] the written findings and order filed in this matter substantially comply with section 632's requirement for a written statement of "the factual and legal basis for [the court's] decision as to each of the principal controverted issues at trial." (Code Civ. Proc., § 632.) Moreover, appellant has available for this court's scrutiny a full record of the proceedings below, as well as 13 pages of written findings of fact and conclusions of law, albeit containing a disclaimer of the necessity of issuing a statement of decision. Since appellant's right to meaningful review of the court's orders is adequately preserved, the denial of the request for a statement of decision does not compel reversal. (See In re Marriage of Wood (1983) 141 Cal.App.3d 671, 678-680; Guardianship of Baby Boy M. (1977) 66 Cal.App.3d 254, 268; cf. In re Rose G. (1976) 57 Cal.App.3d 406, 416-417.)

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6 Compare In re Marriage of Wood (1983) 141 Cal.App.3d 671, 678-680 with In re Marriage of S. (1985) 171 Cal.App.3d 738, 746-750. See also California Rules of Court, rule 232, which sets forth the procedural requirements for the issuance of a statement of decision.

Appellant's remaining contention, that the court failed to consider the criteria set forth in Civil Code section 4370.5 in determining the reasonableness of respondent's attorneys' fees, is equally unavailing. In determining that the $8,500 amount was reasonable, the court appears to have considered that appellant's own attorney had billed him for an "astonishing sum exceeding $25,000" ($37,000) for services performed in connection with the same custody proceedings, and that appellant and his attorney had frustrated "the policy of the law to promote settlement of litigation, and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." (Civ. Code, § 4370.5, subd. (b) (2).) Despite the reasonableness of the fees requested, the court declined to make an order requiring appellant to pay any portion of the $8,500 upon finding that he lacked the present ability to pay. (Civ. Code, §4370.5, subd. (b) (1).) Nor did the court abuse its discretion in providing that appellant should be ordered to pay the $8,500 or some substantial portion of it upon a showing of ability to pay in the future.

Civil Code section 7011 authorizes the court to order payment of reasonable attorneys' fees "to be paid by the parties in proportions and at times determined by the court."

The orders under review are affirmed.

NOT FOR PUBLICATION.

FUKUTO

We concur:

COMPTON, P.J.

GATES, J.

COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
CLAY ROBBINS, JR., CLERK

DIVISION: 2 DATE: 04/03/87

Joseph C. Loesch
18363 Germain Street
Northridge, CA 91324

BO16191

RE: Loesch, Joseph C.
vs.
Heck, Kathryn

2 Civil BO16191
Los Angeles No. CF23417

APR 3 - 1987

PETITION FOR REHEARING DENIED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSEPH C. LOESCH Plaintiff, vs KATHRYN HECK, Defendant.	CASE NO. CF 23417 ORDER FOR CUSTODY, CHILD SUPPORT, PRELIMINARY INJUNCTIVE ORDERS, ETC.

On June 4, 1985, orders to show cause for contempt and for custody, visitation and modification of child support were transferred to Department 19 for hearings. The hearings were commenced on June 4, 1985 with the Court hearing the contempt order to show cause against defendant first. After this hearing, defendant was found guilty of civil contempt and given a summary probation sentence. The hearings on the other matters were then commenced. The Court considered

EXHIBIT "C"

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING

A-25

the testimony, the documentary evidence, declarations and certain psychiatric and psychological reports which parties had stipulated the Court was to consider.

The plaintiff and defendant stipulated that they were, respectively, the father and mother of the minor child. The Court made an order on that stipulation. A judgment for paternity and support adjudging plaintiff herein as the father was filed June 30, 1983 in Case No. LSD 011186. The Court takes judicial notice of that judgment.

The matters were submitted for decision on June 5, 1985 and, on that date, the Court orally announced its decision in the above entitled matter and directed the lawyer for plaintiff to prepare an order memorializing the oral order. The Court asked plaintiff's lawyer to prepare the attorney order because he was the only lawyer who appeared to have been paid. Thereafter, said lawyer wrote the Court a letter wanting to know why the Court failed to follow some of the recommendations of Dr. Chase, a psychiatrist, who had prepared reports that the

Court was to consider in reaching its decision. When the Court advised plaintiff's lawyer that the Court's decision included a consideration of all the reports, including Dr. Chase's report of February 17, 1985, plaintiff then filed a lengthy argumentative request for a statement of decision. Such a request is contrary to the law. A request for a statement of decision is limited to a trial. Code of Civil Procedure Section-632.

It is true that a court must give its reasons for rejecting a joint custody request under some circumstances (see Civil Code Section 4600.5) and the court must make findings or state a reason as to the court's basis for its child support order (see Civil Code Section 4700), but a request for a statement of decision is totally improper after an oral order after a hearing in a pretrial motion or order to show cause. In re Marriage of Wood (1983) 141 Cal. App. 3d 671, suggested that a motion or OSC court follow the statement of decision procedure in stating its reasons or findings as required by Civil Code, Sections 4600, 4600.5, 4700 subd. (a). This Court does not read

the dictum of In re Marriage of Wood, supra, as requiring a separate statement of decision. The Court, in orally announcing its decision on June 5, 1985, did not announce a statement of intended decision but made an order that was to be memorialized by an attorney order. The Court's oral order of June 5, 1985 which is contained in the notes of the official court report, gave its factual reasons why a joint legal custody order was inappropriate and the factual basis for its order for child custody and support.

The Court finds that plaintiff and his lawyer, by the letter of plaintiff's lawyer addressed to the Court after the Court's oral order and by the request for a statement of decision, failed to act in good faith and acted frivolously and with the intent to unnecessarily delay and burden the Court. The request was made without justification or good cause.

It would serve no useful purpose for the Court to initiate sanction proceedings or to continue to require plaintiff or his lawyer to prepare the written attorney order. The matter was submitted for the

Court's decision and order on June 5, 1985. Plaintiff and his lawyer are using unauthorized means to argue against the Court's order. There is no immediate prejudice to the defendant by plaintiff's questionable tactic. The danger in this case is that this unhappy, petty dispute may soon escalate into something ugly or even tragic.

The Court rejects the plaintiff's request for a statement of decision.

The Court now makes the following written order, which order memorializes the Court's oral order of June 5, 1985.

CUSTODY

A. Prior Orders

1. In County of Los Angeles vs Joseph Christopher Loesch, Case No. CSD 011186, the court made no custody order, but the court infers the defendant/mother, a witness only in that case brought under Welfare & Institutions Code Sections 11350.1, 11475.1, 11476.1, had custody because a child support order was made payable to her.

2. In this case, the parties stipulated to joint custody of their minor child. This stipulation became a court order on July 3, 1984. The order provided that defendant/mother was to have physical custody a majority of the time although the plaintiff was to have substantial custody time sharing.

B. Parties

1. The Court finds that both parties are loving, caring, committed parents, but in their struggle for the possession and physical control of and for the affections of their child, they have acted immaturely, contentiously, often irresponsibly, engaging in dispute-provoking conduct, and occasionally acting in a manner contrary to the best interest of the minor child.

2. The parties are presently unable to communicate with each other in any meaningful way concerning any aspect of the life or welfare of their child. In this regard, the plaintiff has embarked upon an extensive campaign against defendant in the court to try to limit defendant's access and rights to see the minor child. This campaign has stifled any

reasonable communication effort by either party and caused great tension and hostility between the parties. In observing the demeanor of the parties, and particularly their facial expressions and manner of testifying, the Court finds that the plaintiff continues to be more rigid and unyielding and would more likely be unwilling to make the compromise and sacrifice necessary for any joint custody order and, particularly, a joint legal legal custody order.

3. The Court expects that the parties will eventually make appropriate adjustments to the shared custody of their child and, in the future, will be more responsible and mature in their relations with each other concerning the welfare and the best interests of the child and the child's day-to-day association and life with both parties.

4. The Court finds no history of child abuse. The plaintiff has failed to sustain his burden that the claimed single incident of child abuse was, in fact, an act of child abuse. The Court further finds that the plaintiff's claim of child abuse plus the charges by plaintiff that the defendant interfered with his

custody time by making him pick up the child at places different than defendant's residence have produced unnecessary stress and anxiety for both parties.

5. At this time, the defendant/mother is found to be more flexible and willing to provide and direct a normal, reasonable environment for the child. The Court finds that the defendant/mother is more able, at this time, to make the decisions required of a parent exercising the responsibilities of legal custody.

6. The Court finds that both parents are in need of a psychiatric, psychological or other behavioral science counseling. The counseling is necessary to help the parties make attitude adjustments so that joint custody can work and to help the parents perform as mature parents. The plaintiff/father refuses to voluntarily become involved in any counseling. The Court recommends that defendant continue to participate in counseling with the minor child at a convenient child guidance center. It is claimed by plaintiff's father that defendant has an alcohol drinking problem. While defendant denies

this is now a problem, the Court advises her to ask that the counseling process include an alcohol or substance abuse program. The Court recommends that the minor child be included in the general counseling process to assist the child in dealing with the disputes, stresses and the tensions of this joint custody situation.

7. The defendant/mother is ordered to try to immediately reinstate herself and her child with Medi-Cal for both medical and dental care.

C. Legal Custody

a. It is ordered that the defendant/mother is to have the sole legal custody of the minor child, Ingrid Kathryn Loesch, born October 17, 1982.

b. The defendant's legal custody means that the defendant shall have the right and responsibility to make decisions relating to the health, education and welfare of the child. In this regard, the defendant/mother shall:

(1) Keep the plaintiff/father advised monthly, in writing, of all medical and/or dental

visits actually made by the child in the prior month and all planned or scheduled medical and dental visits or appointments for the future. These monthly reports will be on a calendar basis and mailed to plaintiff not later than the 10th day of the following month. The first report is for the period from the date of the Court's oral order on June 5, 1985 to June 30, 1985.

(2) Arrange to have the child undergo a complete medical and dental examination, not less than once each calendar year. The child must have such examinations for the year 1985 after June 5, 1985. The doctors and dentists conducting such annual examinations will prepare a written report of these examinations. The defendant will mail to plaintiff a copy of such reports within five (5) days after she receives each of them.

(3) Defendant should, if possible, continue to take the child to Dr. Peter Falk.

c. As the defendant has sole legal custody, the plaintiff is ordered not to take the child to any doctor or dentist except in the case of an emergency or except with prior written consent of defendant/mother, or prior order of the court. Defendant/mother will try not to schedule doctor or dental appointments for the minor child during the custody time-sharing periods of the plaintiff/father except with his prior written consent.

d. Neither party is to take the minor child to a psychiatrist, psychologist, or any behavioral scientist therapist or counselor [except as provided in paragraph B.6. above] without the written consent of the other or prior order of court.

e. Pursuant to the provisions of Civil Code Section 4600.5 subd. (1), plaintiff/father is to have access to the records and information pertaining to the minor child, including, but not limited to, medical, dental and school records.

2. Reasons for the order of sole legal custody to the defendant/mother

As stated above, joint legal custody is unworkable in this case at the present time because the parties are unable to or refuse to communicate concerning the child. The Court finds that the constant pressure exerted by the plaintiff on defendant in these court proceedings has resulted in significant hostility between the parties. This hostility, plus the immaturity and irresponsibility of the parties, has made any meaningful interchange or discussion between them concerning decisions relating to the health, education and welfare of the minor child impossible. The Court finds the defendant/mother to be more flexible, reasonable, nurturing and decisive concerning a shared custody arrangement than the plaintiff/father and she is more able to provide the decision making required of a parent with sole legal custody. Notwithstanding any prior agreement of the parties to the contrary, the Court finds that this order giving defendant sole

legal custody is in the best interest of the minor child.

E. Physical Custody

1. Order. It is ordered that the parties have joint physical custody of the minor child.

2. In order to insure the child has frequent and continuing contact with both parties, the Court orders the parties to share physical custody of the child as follows:

a. The plaintiff/father will have the child from Thursday evening at 6:30 p.m. to Sunday at 6:30 p.m. every other weekend, commencing June 13, 1985, and from Thursday evening at 6:30 p.m. to Friday at 6:30 p.m. on alternate weeks, commencing Thursday, June 6, 1985.

b. The defendant/mother will have the child at all other times.

c. The Court has not provided for time sharing during holidays, birthdays or other special events. The Court expects the parties to commence communicating and to arrange, between themselves, these special time sharing

events. If they make no arrangements between themselves, there will be no special or different custody time sharing for these events.

d. Each party is to have a two (2) week vacation time sharing with the child each calendar year. The parties shall select this vacation time sharing by giving the other a sixty (60) day notice, in writing, of the time selected. The plaintiff/father will have the first choice for the vacation time sharing for 1985 and for all future odd years. The plaintiff/father need give only a thirty (30) day written notice for the year 1985. The defendant/mother will have the first choice for the vacation time sharing for 1986 and for all future even numbered years. All other custody time sharing rights are suspended during the vacation time sharing period except that the custodial parent must advise the other parent of the place where the child will be and the telephone number where the child may be contacted. The parent who does not have the child will be allowed one (1) phone

call per day during this vacation period, but the caller should try not to interfere with any planned activity for the child and should try to limit the call to fifteen (15) minutes.

e. During all change-over or physical transfers of the child in the custody sharing, the plaintiff has the responsibility of pick-up and return of the child to the defendant's residence or at such other reasonable place that the defendant may select upon twenty-four (24) hour notice to plaintiff's designated family member or members. Plaintiff or a member of his family may pick up and return the child.

f. The parties will avoid arguments or other disputes in the presence of the minor child, and will, for the present time, avoid prolonged discussion or other contact during the pick-up or return of the child, except in the case of any emergency.

g. Each parent will maintain clothing and toys for the child at their respective residences. The child may take some clothing and toys when

moving from the residence of one parent to the other.

h. The parties will endeavor to comply with the time schedules in this order, but each must start being more understanding of any delays and should avoid disputes, if possible, over the time schedules.

CHILD SUPPORT.

A. Agnos Act

The Court advised the parties that in considering plaintiff's request (OSC) to modify the previous child support order, the Court will apply the Agnos Child Support Standards Act of 1984 now in order to prevent the application of Civil Code, Section 4730 after July 1, 1985.

B. The Court finds the plaintiff's net monthly disposable income to be $1,145.00 after deducting $250.00 as additional expense for the plaintiff because of his physical custody time share rights. The Court finds that the net monthly disposable income of the defendant is $500.00. The Court finds that these sums result in a change of circumstances compelling a

reduction in and modification of child support payments.

C. Order

1. The Court orders plaintiff to pay directly to defendant as child support, the sum of $202.00 per month, payable one-half on the first day and one-half on the fifteenth day of each month, first payment to commence on June 15, 1985.

2. As additional child support payments, plaintiff is ordered to pay all medical and dental expenses for the child not covered by Medi-Cal.

3. All of said payments for child support are to be paid until the child reaches the age of majority, is emancipated, dies or until further order of the court.

4. The Court, in its discretion, does not order the modification of child support to be retroactive.

ATTORNEY FEES

A. The Court finds the following:

1. The only ability the plaintiff presently has to pay attorney fees is from his earnings mentioned above.

2. The plaintiff has already paid or obligated himself to pay his own lawyer an astonishing sum exceeding $25,000.00 in connection with this case and case CSD 011186.

3. The reasonable value of the legal services performed by her lawyer, Mr. Fiore, in this case is $8,500.00, but that defendant does not have the present ability to pay this sum or any part of it.

B. Order

The Court makes no present order requiring plaintiff to pay attorney fees for defendant's lawyer but, upon a showing of ability to pay in the future, the Court should order plaintiff to pay the $8,500.00 or some substantial portion of it plus the reasonable value for future legal services incurred by plaintiff in the case. Civil Code Section 7011.

RESTRAINING ORDERS

A. Each party is restrained and enjoined from annoying, molesting or harassing the other, directly or indirectly, in person, by mail or by telephone, at either of their respective residences, places of employment or any public place.

B. Each party is restrained from removing the minor child from the seven (7) counties of Southern California without prior written consent of the other or a prior order of the court.

C. Each party is restrained from making derogatory remarks about the other to or in the presence of the minor child.

ROBERT FAINER
Judge of the Superior Court

John H. Sandoz
Judge Pro Tem
Department 43

James H. Zander
Professional Law Corporation
15760 Ventura Blvd.
Suite 700
Encino, CA 91436
818/990-7470

Ronald A. Fiore, Esq.
16133 Ventura Blvd,
Suite 645
Encino, CA 91436
818/783-2602

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSEPH C. LOESCH Plaintiff, vs KATHRYN HECK, Defendant.	CASE NO. CF 23417 **STIPULATION AND ORDER ON ORDER TO SHOW CAUSE**

It is hereby stipulated between the above-named parties that:

[x]* 1. Legal and physical custody of the minor child Ingrid Kathryn Loesch, born October 27, 1982 shall be awarded to the parties jointly as follows:

---

* Where an "X" mark is inserted, all orders following are pendente lite unless specifically denoted otherwise. (Strike out portions not applicable.)

Defendant shall have physical custody of Ingrid Kathryn Loesch, except for the following periods of physical custody of Ingrid Kathryn Loesch which shall be Plaintiff's: Every Tuesday and Thursday evening, commencing Tuesday, June 26, 1984 from 5:30 p.m. to 8:30 p.m.;

Every other weekend, commencing June 29, 1984, from 4:30 p.m. and continuing to 7:30 p.m. on Sunday; Labor Day from 9:00 a.m. to 9:00 p.m.

[x] 2. The parties shall each be restrained from removing the minor child from the seven (7) southernmost counties of the State of California without the written consent of the other party or prior order of the court.

[x] 5. The parties shall each keep the other generally and reasonably informed as to the whereabouts of Ingrid Kathryn Loesch, including the telephone numbers and names of babysitters. Any babysitting in excess of three (3) hours shall be first offered to the party not then having physical custody, who shall have first option to care for the child during that period. The parent exercising said option may remove the child from the home of the then custodial parent.

[ ] 8. In the event either party reasonably believes Ingrid needs medical attention, and the other party fails or refuses to provide her with same, the parties shall both consult with Dr. Falk and/or Dr. Lavin to obtain a recommendation as to treatment. Unless otherwise agreed by the parties, or referred

by Drs. Falk and/or Lavin, Ingrid shall see no other physicians for medical attention.

[ ] 9. Both parties are to submit to and cooperate with a psychiatrist evaluator appointed by the Court (first available), the cost of which Plaintiff shall pay, with respect to the issue of child custody.

[ ] 10. Both parties are to submit to and cooperate with a court ordered probation report, the cost of which shall be paid by Defendant.

[ ] 12. The party commencing a custodial period shall pick up the minor child at the residence of the parent whose custodial period is then ending.

[ ] 13. Neither party shall be considered as having a greater burden of proof than the other with respect to the issue of child custody at the first full hearing thereon which follows the date hereof.

[x] 14. The parties each shall be restrained from annoying, attacking, harrassing, molesting, striking and assulting, threatening, battering or distrubing the peace of the other in any manner whatsoever.

[x] 16. Each of the parties shall be restrained from making derogatory remarks about the other to or in the presence of the minor child.

[ ] 17. Eachof the parties shall be restrained from entering the residence of the other, except to pick up or deliver Ingrid the beginning or end of a custodial period.

[x] 18. Neither party shall interfere with the physical custody of the other party of Ingrid during

such time as the other party shall have such physical custody rights.

19. All other issues reserved.

[x] 22. This stipulation shall be deemed to have been prepared equally by counsel for both parties and shall be incorporated in and made a part of the minute order by reference thereto and as though the same were fully set forth therein.

Dated: June 26, 1984

James H. Zander Attorney for Plaintiff	Joseph C. Loesch Plaintiff
Ronald A. Fiore Attorney for Defendant	Kathryn Heck Defendant

ORDER

The foregoing written stipulation between the parties is approved, declared the order of the Court and ordered filed. The Petitioner and Respondent are ordered to comply with and perform each and all of the terms, conditions, and provisions of such stipulation and agreement at the time or times set forth therein. (This order shall not be served upon anyone not a party to this action.)

Dated: July 3, 1984.

JOHN H. SANDOZ
JUDGE PRO TEM
Judge (Pro Tempore) of the Superior Court

Note to respondents in Propria Persona: The filing of this document will not prevent default. The stipulation is an "appearance," but does not constitute an "Answer."

This is a true certified copy of the record if it bears the seal, imprinted in purple ink, of the Registrar-Recorder.

MAR 2 1984

REGISTRAR-RECORDER
LOS ANGELES COUNTY, CALIFORNIA

REGISTRAR-RECORDER LOS ANGELES COUNTY · CALIFORNIA ·

104 - (STATE BIRTH CERTIFICATE NUMBER)

CERTIFICATE OF LIVE BIRTH
STATE OF CALIFORNIA

BD 120485 (LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER)

THIS CHILD	1A. NAME OF CHILD—FIRST: INGRID	1B. MIDDLE: KATHRYN	1C. LAST: LOESCH			
	2. SEX: Female	3A. TWIN/TRIPLET ETC: Single	3B. IF MULTIPLE THIS CHILD 1ST 2ND ETC:	4A. DATE OF BIRTH—MONTH DAY YEAR: October 27, 1982	4B. HOUR—24 HOUR CLOCK TIME: 0528	
PLACE OF BIRTH	5A. PLACE OF BIRTH—NAME OF HOSPITAL OR FACILITY: Medical Center of Tarzana		5B. STREET ADDRESS (STREET NUMBER OR LOCATION): 18321 Clark Street			
	5C. CITY OR TOWN: Tarzana		5D. COUNTY: Los Angeles			
FATHER OF CHILD	6A. NAME OF FATHER—FIRST: Joseph	6B. MIDDLE: Christopher	6C. LAST: Leosch	7. STATE OF BIRTH: NY	8. AGE OF FATHER: 33	
MOTHER OF CHILD	9A. NAME OF MOTHER—FIRST: Kathryn	9B. MIDDLE: Diane	9C. LAST (BIRTH NAME): Heck	10. STATE OF BIRTH: OH	11. AGE OF MOTHER: 29	
PARENT'S CERTIFICATION	I CERTIFY THAT I HAVE REVIEWED THE ENTERED INFORMATION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF	12A. PARENT OR OTHER INFORMANT—SIGNATURE: Kathryn Diane Heck	12B. RELATIONSHIP TO CHILD: mother	12C. DATE SIGNED: 10/28/82		
ATTENDANT'S CERTIFICATION	I CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE HOUR, DATE AND PLACE STATED	13A. PHYSICIAN OR OTHER ATTENDANT—SIGNATURE—DEGREE OR TITLE: Seymour F. Gorelick	13B. LICENSE NUMBER: G 32400	13C. DATE SIGNED: 10/29/82		
	14. REQUEST OMISSION FROM SOLICITATION LISTS	13D. TYPED NAME AND ADDRESS: Seymour Gorelick, M.D., 18411 Clark Street, Tarzana, Ca				
LOCAL REGISTRAR	15. DEATH—ENTER DATE OF DEATH	16. LOCAL REGISTRAR—SIGNATURE: [signature]	17. DATE ACCEPTED FOR REGISTRATION: DEC 06 1982			

A-48

2/13

Mon - K
Tues - J
Wed - K
Thurs - J
Fri - J
Sat - K
Sun J

Mon - K
Tues - J
Wed - K
Thurs - J
Fri - K
Sat J
Sun K

can't
push-up morning

Law Offices
Louis H. Bernstein
Suite 601
16027 Ventura Boulevard
Encino, California 91436
Telephone (213) 990-6262
Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSEPH C. LOESCH Plaintiff, vs KATHRYN HECK, Defendant.	NO. CF 23417 COMPLAINT TO ESTABLISH PATERNITY AND VISITATION RIGHTS

Plaintiff alleges:

1. Plaintiff is and at all times herein mentioned has been a single man.

2. Plaintiff is and at all times herein mentioned has been a resident of Los Angeles County, California.

3. Defendant is and at all times relevant herein has been a resident of Los Angeles County, California.

4. On or about January 26, 1982, plaintiff and defendant engaged in an act of sexual intercourse in

Los Angeles County, California, and as a result of this act of sexual intercourse the child hereinafter referred to was conceived.

5. On or about October 27, 1982, defendant gave birth to a female child, hereinafter referred to as "the child," namely INGRID KATHRYN LOESCH, who was fathered by plaintiff and conceived as hereinabove alleged.

6. The child is now fifteen months old and resides with defendant in Van Nuys, California.

7. Plaintiff regularly contributes funds for the support, maintenance and care of the minor child. Plaintiff in the past regularly visited with the minor child, but recently defendant refused to allow plaintiff to visit with the child and continues to interfere with plaintiff's paternal relationship with the child.

8. Plaintiff has adequate income and property with which to pay reasonable sums for the support, maintenance and education of the child, and has the ability to assume a paternal role in regard to his natural child.

WHEREFORE, plaintiff prays judgment as follows:

1. That plaintiff be adjudged to be the father of the child.

2. That the Court award joint custody, legal and physical, of the minor child to the parties, or such other custody/visitation award as the Court deems proper, providing for frequent and continuous contacts of the plaintiff with the minor child as is

necessary for the establishment and continuance of plaintiff's paternal relationship with the minor child.

3. That plaintiff be ordered to pay to defendant a reasonable amount each month for the support, maintenance and education of the child.

4. For such other and further relief as the Court may deem proper.

DATED: February 22, 1984.

LAW OFFICES LOUIS H. BERNSTEIN

By: /s/ Louis H. Bernstein
LOUIS H. BERNSTEIN
Attorney for Plaintiff

Law Offices
Louis H. Bernstein
Suite 601
16027 Ventura Boulevard
Encino, California 91436
Telephone (818) 990-6262
Attorney for Plaintiff

ORIGINAL FILED
APR 4 1984
County Clerk

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
111 North Hill Street
Los Angeles, CA 90012
Branch Name: Central

JOSEPH C. LOESCH
Plaintiff,

vs.

KATHRYN HECK,
Defendant.

CASE NO. CF 23417

ORDER TO SHOW CAUSE

[x] Child Custody [x] Visitation

1. To KATHRYN HECK

2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE RELIEF SOUGHT IN THE ATTACHED APPLICATION SHOULD NOT BE GRANTED.

a. date: 5/3/84 time: 8:30 A.M.
in: Dept 2 Rm: 215

b. Address of Court: 111 North Hill Street
Los Angeles, CA 90012

3. IT IS FURTHER ORDERED THAT

a. The following documents shall be served with this order:

Complaint to Establish Paternity and Visitation Rights

Dated: APR 4 1984

JOHN H. SANDOZ
JUDGE PRO TEM

LOESCH, JOSEPH C. v. HECK, KATHRYN
Case Number: CF23417

APPLICATION FOR ORDER AND SUPPORTING DECLARATION OF CLAIMANT requests the following relief.

1. [x] CHILD CUSTODY
   [x] TO BE ORDERED PENDING THE HEARING

   a. Child

      1) Name

      INGRID KATHRYN LOESCH

      2) Age

      15 months

   b. Request custody to

      Joint legal & physical custody, plaintiff & defendant

2. [x] CHILD VISITATION

   Week 1
   Tuesday 6:00 pm to Wednesday 7:30 am
   Thursday 6:00 pm to Friday 7:30 am
   Friday 6:00 pm to Saturday 10:00 am
   Sunday 10:00 am to Monday 7:30 am

   Week 2
   Tuesday 6:00 pm to Wednesday 7:30 am
   Thursday 6:00 pm to Friday 7:30 am
   Saturday 10:00 am to Sunday 10:00 am

13. FACTS IN SUPPORT OF RELIEF REQUESTED AND CHANGE OF CIRCUMSTANCES FOR ANY MODIFICATION ARE:

I am the natural father of the minor child, INGRID KATHRYN LOESCH, 15 months old. I have been regularly visiting with the child until recently when defendant refused to allow me to pick up the child. Previously the visitation was extensive and overnight. Both equity and the best interest of the child mandate that I maintain close and frequent contact with my minor child.

I also wish to have both physical and legal custody jointly with the defendant.

I declare under penalty of perjury under the laws of the State of California that the foregoing, including any attachment, is true and correct and that this declaration is executed on (date):

March 16, 1984 at Encino, CA.

/s/ Joseph C. Loesch
(Signature of applicant)

RONALD A. FIORE
16133 Ventura Boulevard
Suite 645
Encino, California 91435
Telephone (213) 783-2602
Attorney for Respondent/Defendant

FILED
May 22, 1984

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
111 North Hill Street
Los Angeles, CA 90012
Branch Name: Central

JOSEPH C. LOESCH
Plaintiff,

vs.

KATHRYN HECK,
Defendant.

CASE NO. CF 23417

RESPONSIVE DECLARATION TO ORDER TO SHOW CAUSE OR NOTICE OF MOTION

Hearing Date: 5/3/84
Time: 8:30 a.m.
Dept: II

1. [x] CHILD CUSTODY AND SUPPORT

b. I consent to the following order:

That the defendant retain full physical custody with reasonable visitation by the plaintiff.

2. [x] CHILD VISITATION

b. I consent to the following order:

Reasonable, with no over-night visitation. Two nights a week and all day Sunday.

5. [x] ATTORNEY FEES

b. I consent to the following order:

That the plaintiff pay the defendant's attorney's fees and costs.

12. [x] SUPPORTING INFORMATION

[x] contained in the attached declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing, including any attachment, is true and correct and that this declaration is executed on (date): 4/28/84 at Encino, CA.

Kathryn Heck
(Signature of Declarant)

DECLARATION OF KATHRYN HECK

Prior to December 5, 1983, the plaintiff was visiting the child of the parties, Ingrid, age, one year, on Tuesday and Thursday evenings and all day on either Sunday or Saturday, as his schedule would permit.

On December 5, 1983, the defendant requested that Ingrid stay with him overnight on three nights of the week, in addition to this regular visiting schedule. I agreed to it on a trial basis. After about three weeks I noticed some drastic changes in Ingrid's behavior. She was excessively whiney and would cling to me during the day. She displayed unusual and unprovoked agression toward her playmates, such as biting, pulling hair and scratching. When sleeping, she would awaken four or five times and cry, which she had never done before. Problems with her bronchitis also arose and she was taken to her pediatrician for medication. She would also sleep during the ride to my employment, which she had never done before, after the plaintiff had dropped her off with me.

For these reasons, I decided to change the visitation schedule to its original state, without any overnight stays. The defendant would not listen to my reasons but was mainly concerned with his having her for overnight visits which has lead to this proceeding.

Since the change-over to the present schedule, the above-stated behavior problems have vanished. The present schedule is Tuesday and Thursday nights from 5:30 to 8:30, and every Sunday from 10:00 a.m. to 8:00 p.m..

In regards to my request for attorney's fees, an Income and Expense declaration is attached. I cannot afford to pay my attorney fees.

RONALD A. FIORE
16133 Ventura Boulevard
Suite 645
Encino, California 91435
Telephone (818) 783-2602

Attorney for Defendant

ORIGINAL FILED
SEP 25 1984
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSEPH C. LOESCH Plaintiff, vs KATHRYN HECK, Defendant.	NO. CF 23417 **ANSWER TO COMPLAINT**

COMES NOW THE DEFENDANT, KATHRYN HECK, and in response to the verified complaint on file herein, admits, denies and alleges as follows:

1. Answering paragraphs 1, 2, and 4 of the complaint, this defendant has no information or belief sufficient to enable her to answer said allegations, and based upon such lack of information and belief thereby denies each and every allegation contained therein.

2. In answering paragraph 5 of the complaint, this defendant admits that she gave birth to a child on or about October 27, 1982, and as to all other

allegations contained therein has no information or belief sufficient to enable her to answer said allegations, and based upon such lack of information and belief thereby denies each and every allegation contained therein.

3. In answering paragraphs 3 and 6 of the complaint, this defendant admits the allegations contained therein.

4. In answering paragraph 7 of the complaint, this defendant admits that the plaintiff has contributed funds for the child and that the plaintiff has regularly visited with the child, but denies each and every other allegation contained therein.

5. In answering paragraph 8 of the complaint, this defendant denies that the plaintiff has the ability to assume a paternal role regarding any child.

WHEREFORE, defendant prays judgment as follows:

1. That the Court determine parentage of the child;

2. That the Court deny plaintiff's request for joint legal and physical custody of the minor child.

3. That the Court determine reasonable child support for the child to be paid by the plaintiff, should the court determine that plaintiff is the natural father;

4. That the Court award attorney's fees and costs to the defendant; and,

5. For such other and further relief as the Court may deem necessary and proper.

DATED: 7/12/84

Ronald A. Fiore
Attorney for Defendant

VERIFICATION

I have read the foregoing ANSWER and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on July 12, 1984, at Encino, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Kathryn Heck
Signature